COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department on its own motion into the appropriate regulatory plan to succeed price cap regulation for Verizon New England, Inc. d/b/a Verizon Massachusetts' retail intrastate telecommunications services in the Commonwealth of Massachusetts	DTE 01-31

SURREBUTTAL TESTIMONY OF

DEBORAH S. WALDBAUM

ON BEHALF OF AT&T COMMUNICATIONS OF NEW ENGLAND, INC.

November 1, 2001

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Deborah S. Waldbaum. My business address is 6400 S. Fiddlers Green Circle, Suite 800, Englewood, Colorado.

Q. ARE YOU THE SAME DEBORAH WALDBAUM THAT SUBMITTED TESTIMONY ON BEHALF OF AT&T IN THIS PROCEEDING ON AUGUST 24, 2001?

A. Yes.

Q. HAVE YOUR OCCUPATION AND QUALIFICATIONS REMAINED THE SAME SINCE YOUR AUGUST 24, 2001 TESTIMONY?

A. Yes.

Q. FOR BACKGROUND PURPOSES, PLEASE DESCRIBE THE PURPOSE OF YOUR AUGUST 24, 2001 TESTIMONY?

A. My testimony addressed the inability of AT&T and other CLECS to use unbundled network elements ("UNEs") to provide local exchange business services, forcing them to pay Verizon considerably more than economic cost for special access facilities. I stated that this situation created a significant barrier to CLEC entry into the local business market, preventing sufficient competition between CLEC and Verizon. Given these facts, I testified that approval of Verizon's Alternative Regulation Plan was unwarranted.

Q. DID VERIZON'S REBUTTAL TESTIMONY IN THIS PROCEEDING ADDRESS YOUR TESTIMONY CONCERNING THE COSTS FACED BY AT&T AND OTHER CLECS ATTEMPTING TO USE UNES TO PROVIDE LOCAL EXCHANGE BUSINESS SERVICES?

A. No. In fact, the rebuttal testimony of Verizon expert Michael J. Doane bases much of its market analysis upon the assumption that UNEs are easily available to CLECs at economic cost. Mr. Doane states on page 7 of his testimony: "[t]he

Department has implemented policies that require an ILEC . . .to offer its unbundled network element inputs at TELRIC-based rates . . . [a]ccess to UNEs provides CLECs with an entry path that allows them to avoid incurring the sunk costs of building their own local exchange network facilities. Unbundling thus plays a critical role in market power analyses of local exchange markets." *See also* Doane Testimony at 9-10.

The Doane testimony ignores the fact that, for the reasons outlined in my direct testimony, CLECS are unable to obtain UNEs to provide local exchange business services. As I described, CLECs instead must use Verizon's special access services. Thus, CLECs incur a cost that is substantially greater than Verizon's cost for the network elements necessary to provide a competing business service.

Q. DID THE DOANE TESTIMONY MAKE OTHER UNPROVEN ASSUMPTIONS REGARDING THE ABILITY OF CLECS TO OBTAIN ACCESS TO THE NETWORK ON THE SAME BASIS THAT VERIZON DOES?

A. Yes. In addition to assuming that CLECs can obtain access to the network at economic cost, the Doane testimony assumes that CLECs can obtain them at provisioning parity with Verizon, that is, just as quickly and with the same level of service quality as Verizon.

Q. WHY IS VERIZON'S WHOLESALE PROVISIONING OF THE NETWORK AN ISSUE IN THIS PROCEEDING?

A. CLECs rely on Verizon's network to provide most of the services CLECs offer in competition with Verizon. In some instances, CLECs can obtain UNEs, but as I testified earlier, regulatory rules prevent the use of UNEs in most cases and

CLECs must use Verizon's special access services instead. Thus the ability of CLECs to provide effective competition is dependent upon Verizon's wholesale provisioning, both the provisioning of UNEs and the provisioning of special access circuits.

Q. HAS VERIZON MET ITS BURDEN OF ESTABLISHING WHOLESALE PROVISIONING PARITY?

A. No. Verizon's testimony makes no effort to establish that CLECs have access to the network on the same basis that Verizon does. In order to show that there is provisioning parity, Verizon would need to establish that *both* special access circuits *and* UNEs have been provisioned to CLECs at parity with Verizon's retail customers. This is particularly important in light of the fact that the New York Public Service Commission has recently found that Verizon provisions special access services in favor of its retail customers to the disadvantage of CLECs. *See* Opinion and Order Modifying Special Services Guidelines for Verizon New York, Inc., Conforming Tariff, and Requiring Additional Performance Reporting, Case 00-C-2051, Case 92-C-0665, Issued and effective June 15, 2001.

Q. WHAT IS THE STATE OF THE RECORD REGARDING VERIZON'S WHOLESALE PROVISIONING PERFORMANCE.

A. With regard to special access provisioning, Verizon has presented no evidence at all. AT&T has, however, filed discovery in both this docket and in DTE 01-34 seeking statistics that would show whether Verizon provisions special access circuits to CLECs in parity with its own retail customers. Verizon has not yet provided a response. Regarding UNEs, Verizon presented no statistics regarding provisioning parity.

Q. WHY CAN'T VERIZON SIMPLY RELY ON THE CARRIER TO CARRIER METRICS ("C2C METRICS") THAT IT FILES WITH THE DEPARTMENT MONTHLY TO DEMONSTRATE UNE PROVISIONING PARITY?

A. First of all, Verizon has not sought to introduce them into evidence or to explain them or use them in anyway. This is a fundamental failure of proof by Verizon. Second, even if Verizon had tried to use the C2C metrics, they would require significant explanation and justification. Indeed, Verizon would need to prove the validity of the statistics measuring Verizon's *retail* performance. AT&T has recently discovered wild fluctuations in the reporting of Verizon's retail performance for several of the metrics. The validity of the statistics regarding Verizon's own retail performance is critical to the meaning of the monthly reports because many of the standards for performance are based on parity. If Verizon's retail performance is not being measured properly, then the performance reports do not mean anything.

In April 2001, without notice to, or discussion with either CLECs or regulatory authorities, Verizon made adjustments to its reporting methodology that significantly effected Verizon's reported retail data. AT&T only discovered the possibility of these adjustments by observing anomolies in the retail data that Verizon reported. Verizon only acknowledged a change in its method of calculating its retail performance when AT&T inquired about it during October 2001. Verizon claimed these changes in methodology were made to comply with Carrier-to-Carrier guidelines. Yet, the changes were made unilaterally by Verizon without regulatory review and without notice to, or discussion with, any of the CLECs affected.

From a quick review of the September 7, 2000, Final Report of KPMG Consulting (“Version 1.4”) (entitled “Bell Atlantic OSS Evaluation Project”), it is not clear to me whether the types of transactions included in the calculation of Verizon's *retail* performance and the methods of calculation were audited by KPMG. But, whether they were or not, the ability of Verizon to make undisclosed unilateral changes in such calculation methods undermines the validity of any conclusions that can be reached regarding parity of performance based upon the performance reports.

Given the complete absence of any kind of validation process for Verizon’s important retail data, its Carrier-to-Carrier metrics can not be relied upon in this proceeding to establish any kind of UNE provisioning parity.

Q. EVEN IF VERIZON’S CARRIER-TO-CARRIER METRICS WERE ACCEPTED AS VALID, WOULD THEY SUPPORT A FINDING OF UNE PROVISIONING PARITY?

A. The C2C metrics are detailed and complicated. They should be the subject of serious investigation before the Department can rely on them to support a finding of provisioning parity sufficient to justify Verizon price deregulation for business services. A quick review of the relevant statistics, however, indicates that Verizon has much explaining to do if it wants the Department to make the findings necessary to grant Verizon’s request for price deregulation. I have attached a document which shows the statistics that Verizon has reported for metrics related to business services. *See* “Attachment A”. AT&T took these numbers from Verizon’s reports.

First of all, the time (often referred to as the "interval") that Verizon offers to its own retail customers for the installation of special access circuits is significantly shorter than the interval it promises to CLECs for installation of the same facilities. The available 2001 data (January through August) indicate monthly average intervals offered to Verizon's own retail customers of 5 to 17 days. The monthly average intervals offered to CLECs ranged from 16 to 46 days over the same period. *See* Attachment A at PR-1-01.

With respect to the "percent on time" metrics, one must understand that the unilateral and unverified change that Verizon made to its own retail reported results beginning in April has resulted in data indicating that Verizon has been meeting its due date more frequently for CLECs than for itself. The swing in many Verizon retail special services provisioning performance indicators since the unverified April adjustment has been dramatic. This is not surprising given that Verizon promises a much shorter interval to its retail end-users than it does to CLEC, providing the Company with a cushion for its on-time performance statistic.

These data, therefore, on their face raise serious questions as to whether Verizon is engaging in anticompetitive practices in the provisioning of UNEs used by Verizon's competitors to compete with Verizon for business services. Verizon knows that a CLEC cannot promise service to the customer any sooner than the date by which it obtains the underlying network elements from Verizon. Verizon also knows that business customers on tight schedules are naturally inclined to select a carrier that is able to initially promise a much briefer provisioning schedule. Such initial promises of quicker provisioning places yet another large obstacle for CLECS to overcome in attempting entry into local business markets. As Dr. Mayo points out in both his rebuttal and surrebuttal testimonies, this sort of anti-competitive tactic by a vertically integrated monopolist over the "upstream" input, is referred to as "sabotage."[1] Moreover, in this case in Massachusetts, the longer intervals offered to CLECs has the collateral benefit of reducing Verizon's exposure to penalties, since "average interval offered" is not a metric that triggers penalties under the PAP, while "percent on time" is.

The data on their face also indicate tactics affecting a later stage of the provisioning and service process. Circuits installed for CLECs have consistently experienced greater levels of problems within the first 30 days after installation and over the life of the circuit. *See* Attachment A at PR-6-01, MR 2-01.

Given the absence of any evidence presented in this case by Verizon, the absence of reliability in the Verizon retail statistics in the Carrier-to-Carrier metrics, and the discriminatory story suggested by the Carrier-to-Carrier metrics on their face, Verizon's assumption that it is providing TELRIC priced UNEs at provisioning parity is not supported on this record.

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[1] *See* Direct Testimony of John W. Mayo, D.T.E. 01-31, August 24, 2001, p. 15; Surrebuttal Testimony of John W. Mayo, D.T.E. 01-31, November 1, 2001, p. 15.

Q. IS THERE OTHER EVIDENCE ESTABLISHING VERIZON'S FAILURE TO PROVISION UNES AT RETAIL PARITY?

A. The testimony submitted by the Massachusetts Attorney General's expert, Lee Selwyn, in this case provides a concrete example of provisioning problems encountered by a Verizon competitor when attempting to provide its customers with special services. In this case, it involved service for Dr. Selwyn's consulting firm, Economics and Technology, Inc. ("ETI"). I have reviewed Attachment 2 to the Mudge Testimony filed on September 21, 2001, which attempts to shift to ETI's carrier responsibility for the delays that ETI encountered. AT&T was (and is) ETI's carrier. I work closely with the AT&T provisioning personnel involved in that order and my work requires me to be very familiar with the process in general. Based on my review of AT&T's records and on conversations with the relevant personnel, Attachment 2 to Mr. Mudge's testimony portrays a very inaccurate picture of what in fact happened.

The enclosed "Attachment B" provides a chronological summary of events concerning the provisioning of T1 service to ETI compiled in consultation with several AT&T personnel who worked on the order. As this document makes clear, Verizon's provisioning was to blame for a significant portion of the delays encountered by ETI. Furthermore, several of Verizon's characterizations concerning the problems encountered on this project (Attachment 2 to Testimony of Robert Mudge) are refuted.

The ETI experience provides a good example of the power and control that Verizon has over carriers offering competing business services as a result of its control over “the last mile”.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.